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Security Council

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Letter dated 20 December 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 19 October 2004 (S/2004/841). The Counter-Terrorism Committee has received the attached fourth report from Panama submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Andrey I. Denisov
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

04-66949 (E) 020205 030205

Annex

[Original: Spanish]

Letter dated 16 December 2004 from the Permanent Representative of Panama to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit the reply of the Government of Panama to the questionnaire attached to your note dated 20 September 2004, pursuant to Security Council resolution 1373 (2001) (see appendix).

(*Signed*) Ricardo Alberto **Arias**
Ambassador
Permanent Representative

Appendix*

[Original: Spanish]

Republic of Panama
Ministry of Foreign Affairs

Fourth report of the Republic of Panama to the Counter-Terrorism Committee of the Security Council, submitted pursuant to paragraph 6 of resolution 1373 (2001)

Implementation measures

Protection of the financial system

1.1 The CTC would like to be able to ascertain whether Panama's Financial Analysis Unit for the Prevention of Money Laundering and Financing of Terrorism is adequately structured, funded, staffed and provided with sufficient technical and other resources fully to equip it to perform its mandate. Please include data in support of your response to the above question, and please also provide information concerning the independence and autonomy of this unit fully to perform its functions.

The Financial Analysis Unit for the Prevention of Money Laundering and Financing of Terrorism is structured as follows: the offices of the Director General and his deputy, each with its own secretariat; the Analysis Department, the Legal Advisory and International Affairs Unit, the Technology Unit, and the Data Processing Unit. As for financing, the Financial Analysis Unit has a reasonable level of financial resources to enable it to carry out its mandate.

Each of the aforementioned areas of work is staffed by appropriate personnel, who receive regular skills development and training in areas currently affecting their work.

The Unit has the necessary technological equipment and tools in order to conduct very high-quality research. One such tool is the iBase system, a database program currently used by most financial analysis units. Information is received by completely digital means, which improve data control and security.

The Unit is an entity with independent authority to manage and analyse the information received in the exercise of its functions, pursuant to the provisions of article 2 (e) of Executive Decree No. 78 of 5 June 2003, which gives it the power to submit information directly to the Attorney General when it believes that the Office of the Public Prosecutor should launch an investigation.

1.2 Regarding the reporting obligations described in the report S/2003/701 at pages 4 to 7, the CTC would appreciate receiving more details on the operation of this machinery. In particular, the CTC would appreciate learning the number of suspicious transactions that have been reported to the Panamanian Financial Intelligence Unit in recent years. How many transfers did banks freeze, after doubts have been expressed in relation to certain transactions?

* The attached documentation may be consulted in the Secretariat.

Have there already been convictions of financial intermediaries in Panama for a "failure to report suspicious transactions"? What are the penalties that can be incurred, and what have actually been handed down?

For the number of suspicious transactions that have been reported to the Unit, see the appendix to the present report, which contains statistics on reports of suspicious transactions and fines.

We do not currently have statistical data on convictions of financial intermediaries.

As for penalties that can be incurred by such offenders, article 8 of Act No. 42 of 3 October 2000, which establishes measures for the prevention of money-laundering, specifies that persons failing to comply with its provisions shall be liable to fines ranging from $5,000 to $1 million, without prejudice to the provisions of the Penal Code and other laws. Information concerning the penalties applied can be found in the appendix.

1.3 Regarding the obligation to determine "the economic ownership" of a bank account described in the report S/2003/701 at pages 8-9, have any financial intermediaries been convicted in Panama for "inadequate vigilance" in verifying economic ownership? If so, please elaborate.

To date, we have not determined whether any intermediary has been convicted for "inadequate vigilance" in verifying economic ownership.

Effectiveness of counter-terrorism machinery

1.4 Regarding the effectiveness of anti-terrorist strategy, subparagraph 2 (b) of the resolution requires States to take steps to prevent the commission of terrorist acts. In this regard, please outline any special anti-terrorist policies that Panama has developed that are aimed at preventing the commission of terrorist acts in the following areas:

- **Criminal investigation and prosecution;**
- **Links between terrorism and others criminal activities;**
- **Physical protection of potential terrorist targets;**
- **Strategic analysis and forecasting of emerging threats.**

Concerning criminal investigation and prosecution, the Unit has sent a considerable number of its officials on training courses in anti-terrorist measures. These courses have also been taken, inter alia, by United States investigative agencies.

Under Executive Decree No. 78 of 5 June 2003 the Unit may, in addition to investigating money-laundering, look into cases which may be related to the financing of terrorism.

In 2003, pursuant to Security Council resolution 1373 (2001), Panama adopted Act No. 50 which added a chapter entitled "Terrorism" to the section of the Penal Code relating to collective security. This legal text defines the offence of terrorism, as well as its financing, and sets out the corresponding penalties.

Act No. 50 also added a paragraph to article 127 of the Judicial Code, providing for the superior courts to try at first instance cases involving terrorist offences.

As can be observed in this Act, article 264 (a) describes what is involved in terrorist acts, and the following articles set out the connections with other offences considered to be related to terrorist activity, such as financing, assistance and concealment or transfer of funds or goods.

Concerning the physical protection of potential terrorist targets, the Panamanian police authorities have recently coordinated an exercise involving reactions to possible threats against the Panama Canal, jointly with senior officers of the armed forces of the United States and of a number of Latin American and Caribbean countries.

It should be noted that there are mechanisms and requirements which have been in force since before the events of 11 September 2001, for the prevention of accidents and incidents at sea. Since the Panama Canal is a structure of international public utility, it is governed by external maritime transport standards. The Panama Canal Authority has continually strengthened all its protection and security measures, including a Risk Analysis Group for ships passing through the canal.

The Authority has increased the number of personnel protecting its installations, access points to the canal, and other sites. It has also invested in equipment and technology to reduce the risks.

In this area, it has also concluded bilateral agreements to counter the threat of terrorism and to plan courses of action in the event of incidents on a scale too great for it to deal with.

The Republic of Panama recognizes the importance of prevention through the forecasting of terrorist threats. It has therefore spared no effort in the training and instruction of experts in the analysis of preventive measures to minimize the risks.

1.5 The CTC would be interested in learning whether Panama has encountered any particular difficulties regarding law enforcement and/or the gathering of intelligence in relation to the above areas. If so, please provide a brief description of what these difficulties were. The CTC would also find it helpful to receive information on recent successful operations in these areas. In providing examples, the CTC would like to make it clear that it does not expect Panama to supply information in respect of ongoing investigations or judicial processes, if to do so would prejudice the proper conduct of an investigation or judicial process.

We believe that, although commutation and pardon are the exclusive, sovereign privilege of States, their granting to accused or convicted persons may be incompatible with the efforts of the international community to effectively prevent and combat terrorism.

As for difficulties in the gathering of intelligence, we have not experienced such difficulties in general terms, in light of the fact that Panama is a State party to a considerable number of international treaties relating to legal assistance and cooperation for the sharing of information.

It can also be said that there have been no obstacles to the holding of the international joint exercises which have been conducted in our territorial waters and the Canal Zone.

1.6 Specifically regarding criminal proceedings, subparagraph 2 (e) of the resolution requires States, inter alia, to ensure that terrorists and their supporters are brought to justice. The CTC would be grateful to know if there are any specific counter-terrorist measures applied in criminal proceedings. In this same regard, does Panama train its administrative, investigative, prosecutorial and judicial authorities to enforce its laws in relation to:

- **Typologies and trends in terrorist financing methods and techniques;**
- **Techniques for tracing criminal properties and funds with a view to their seizure and confiscation?**

Within the penal procedures of the Republic of Panama, as was stated under question 1.4 on criminal investigation and prosecution, the Penal Code defines and penalizes the offence of terrorism with penalties between 15 and 20 years' imprisonment. Anyone who knowingly or intentionally encourages or assists in activities carried out by individuals or organized groups with the intention of performing terrorist acts, even without participating in such activities, incurs a sentence of 8 to 10 years; and the same penalty applies to anyone who conceals, shelters, accommodates or recruits persons to engage in terrorist acts or join groups for that purpose.

Effectiveness of customs, immigration and border control

1.7 Subparagraph 2 (g) of the resolution requires States to have in place effective border controls in order to prevent the movement of terrorists and terrorist groups.

Passengers and cargo in Panama are monitored by separate bodies, namely, the Directorate General of Customs and the National Directorate of Migration and Naturalization.

In accordance with Panamanian legislation, the Directorate General of Customs is the body responsible for monitoring and supervising the passage of goods, persons and vehicles through the country's frontiers, its ports equipped for external trade and its airports, taking the appropriate actions in respect of international goods traffic in order to collect duty on such goods, and preventing, prosecuting and suppressing customs-related offences.

These two government bodies, however, work very closely together. They also provide support to each other when one of them requires particular information in the context of an investigation.

Their activities are coordinated in cases which, by their nature, call for joint participation by the two agencies.

The Directorate General of Customs also inspects, monitors and supervises movements of cargo through Panamanian airports.

As for the role of the customs agency at the country's borders, it is empowered to require compliance with legal and regulatory provisions governing movements of persons, goods and means of transport through places which are equipped for

foreign trade, to provide information on the provisions applicable to such movements, and to penalize any person failing to comply with legal provisions relating to customs.

The Directorate General of Customs has checkpoints at strategic locations throughout the country.

Since ports in the Republic of Panama have been handed over to the private sector under concession agreements, private security staff are present at points of entry, and customs inspectors at goods shipment points (import and export). In this way, port areas are monitored and controlled by the customs authorities.

All customs staff working at ports and airports are duly identified by a pass issued by the customs authorities.

As mentioned above, the ports are managed and operated by private companies. Consequently, access is restricted to authorized personnel.

Airports and ports are provided with the necessary equipment for checking cargo and merchandise.

For shipments of dangerous materials the carrier, or the provider of the cargo transport service, is required to comply with the current national legal provisions governing such shipments.

1.8 How does Panama monitor its borders between ports of entry in order to satisfy itself both that these areas are not being used to undertake terrorist activities against its neighbours, as well as to defend itself against possible infiltration by terrorists? Does Panama have existing arrangements to cooperate with bordering States in order to prevent cross-border terrorist acts? If so, please elaborate.

In response to the terrorist attacks of 11 September 2001, Panama and its neighbouring States adopted measures to reduce the cross-border threat.

To ensure that Panama is a secure port with minimal levels of risk, measures have been adopted at the national and international level, including the following:

- Draft inter-agency agreement between the Panama Maritime Authority (PMA) and the National Maritime Service (NMS), to strengthen the security and protection of port zones and of Panamanian territorial waters.
- Draft security plan for ports, cruise ships and passenger ships. Its purpose is to ensure that the security entities and State agencies involved carry out their work in an integrated and coordinated manner, to prevent attacks against ships, port installations and personnel, and that related activities take place normally and in secure conditions.
- Adoption of the regulations contained in Chapter XI-2 of the International Convention for the Safety of Life at Sea (SOLAS), which enshrines the International Code for the Security of Ships and Port Facilities (ISPS Code). A Port Protection Committee is being created, with appropriate functions. The Committee's task is to collaborate with the Department of Maritime Protection. Also, if it considers it appropriate, it will test the effectiveness of protection plans for ships and port installations.

- **An agreement has been concluded between Panama and Colombia on binational border commissions (COMBIFRON), establishing a cooperation mechanism between the States parties in order to deal with the threat of criminal activities in the border area. The aforementioned Committee assesses cross-border threats, implements preventive measures and rectifies any irregularities that may arise. This mechanism protects the country from illicit activities of various kinds, provides protection against threats such as terrorism, and ensures better security in the country's ports.**

- **An agreement on cooperation on police-related matters has been concluded between the Ministry of Defence of Colombia and the Ministry of the Interior and Justice of Panama. This agreement seeks to create closer relations through the sharing of information between the two countries. Article 2 of the agreement establishes mechanisms for anti-terrorist measures.**

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I write with reference to my predecessor's letter of 18 July 2003 (S/2003/749). The Counter-Terrorism Committee has received the attached third report from Tajikistan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

04-66999 (E) 270105 080205

Annex

[Original: Russian]

Note verbale dated 15 December 2004 from the Permanent Mission of Tajikistan to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Tajikistan presents its compliments to the Chairman of the Committee and has the honour to transmit herewith the third report of the Republic of Tajikistan, which contains information on the issues covered by the Committee (see enclosure).

Enclosure*

[Original: Russian]

Report of the Republic of Tajikistan submitted to the United Nations Counter-Terrorism Committee pursuant to paragraph 6 of resolution 1373 (2001)

Introduction

As it has in the past, the Republic of Tajikistan firmly and unreservedly condemns terrorism in all its forms and manifestations and supports the counter-terrorism measures taken by the international community with the United Nations in a central coordinating role. In that connection, it holds Security Council resolution 1373 (2001) of 28 September 2001 in high regard.

Terrorism has clearly developed into an international problem that is no longer confined to any single State or region. It threatens the entire international community and requires active counter-measures at national, regional and international levels. Tajikistan considers that they should provide a basis for international cooperation against international terrorism. The resolution in question, which provides the framework for the establishment and operation of the Security Council Counter-Terrorism Committee (CTC), is a single, unique instrument for monitoring international compliance with commitments to combat international terrorism. The international community must set up a unified, global and effective system, based on the principles of the United Nations Charter and the fundamental provisions of international law, to cope with new terrorist challenges and threats. Countering terrorism must not be seen as a clash of civilizations or as being linked with any particular religion.

Recent terrorist acts in Spain, the deteriorating situation in Uzbekistan and the continuing war in Iraq have shown that international terrorism is coordinated and has a global reach. Because international terrorism is trans-territorial, all countries must come together to combat it.

Tajikistan is concerned at the increasing number of terrorist acts throughout the world and is taking further steps, with international cooperation, to use lawful means to prevent and suppress such acts within its territory.

Paragraph 1 of Security Council resolution 1373 (2001)

1 (a): Steps taken to prevent and suppress the financing of terrorist acts

In this connection, decision No. 506 of the Government of the Republic of Tajikistan of 9 November 2001 on the implementation of the laws and regulations of the Republic of Tajikistan remains in force. In accordance with that decision, the National Bank of the Republic of Tajikistan has prepared an order requiring commercial banks in Tajikistan to locate and freeze, in a timely manner, funds and other financial assets or economic resources of persons and organizations who directly or indirectly commit or attempt to commit terrorist acts and also participate in the commission of terrorist acts or assist in their commission.

* Annexes are on file with the Secretariat and are available for consultation.

In order to uncover and block possible channels for the financing of terrorism, the competent bodies of the Republic of Tajikistan have continued to conduct operational searches of organizations and persons suspected of involvement in terrorist activities.

In the course of their criminal investigation into the Hizb ut-Tahrir extremist party, the law-enforcement agencies of the Republic of Tajikistan have determined that some of the members of that radical party have received financial support from abroad to expand the party's activities. In 2002 and 2003, the personal account of a member of Hizb ut-Tahrir, held at the Eskhata Bank in Khojand, Tajikistan, received from a United States citizen deposits of $5,995 and $5,280, via Morgan Chase Bank and Habib Bank in New York and via Alfa Bank in Moscow. The organs of the Prosecutor's Office froze the sums held in the personal account of that individual with the Eskhata Bank in Tajikistan.

In 2003, the Parliament of Tajikistan ratified an agreement between the countries of the Commonwealth of Independent States (CIS) to counter the legalization (laundering) of proceeds of crime.

Recognizing that the main sources of terrorist financing are the smuggling and illegal circulation of narcotics and the trade in arms, the law-enforcement agencies of the Ministry of Security, Ministry of Internal Affairs, the Government Committee for the Protection of the State Border, the Drug-Control Agency within the Office of the President, the customs department of the Ministry of State Revenue and Taxes and the "Red Banner" border-guard directorate of the Federal Security Service of the Russian Federation in Tajikistan have stepped up their work in those fields. In February 2004, in the interests of joint efforts to counter the expansion of drug trafficking, the Drug-Control Agency within the Office of the President of Tajikistan and the State Committee of the Russian Federation signed an agreement on cooperation to counter the illegal circulation of narcotics, psychotropic substances and their precursors.

The expansion of the supply and illegal circulation of narcotics has been caused by the global military-political and economic developments taking place in Afghanistan and by the opportunism of international criminal networks, which are trying to turn Central Asia into a social and raw-material hub for mass production, distribution and transit of drugs. At present, Afghanistan produces 70 per cent of opiates, with 40,000 hectares growing opium poppies and with heroin now improving in quality and returning to the previous record output levels it had reached under the Taliban.

In 2003, the authorities seized 2,634.699 kg of narcotics in Tajikistan. Those seizures represented over twice the amount seized in the first quarter of the previous year, with 1,833.334 kg being heroin, 585.752 kg raw opium, 202.271 kg cannabis-related narcotics and 13.638 kg other narcotics. A number of prominent drug lords were brought to criminal trial; they even included members of law-enforcement agencies. In the first quarter of 2004 alone, 1,220.175 kg of narcotics were seized, with 722.732 kg being heroin, 242.236 kg raw opium, 245.168 kg cannabis-related narcotics and 10.040 kg other narcotics.

During the course of such operations in 2003 and the first quarter of 2004, the sub-units of the Ministry of Security of Tajikistan alone seized over 470 firearms, over 10,000 rounds of ammunition and about 130 kg of explosives and explosive devices.

In order to prevent the illegal importation of arms and ammunition and drug smuggling, and to keep out terrorists and saboteurs, the capacity of the Ministry of Security, the Ministry of Internal Affairs, the Ministry of Defence and the Government Committee for the Protection of the State Border to provide operational and physical coverage of the Tajik-Afghan border has been improved. The areas most vulnerable to border violations have been placed under special control and the regime governing entry, departure and the transport of goods through checkpoints situated on the State border has been placed under stricter control in order to prevent the possible import of substances for carrying out subversive terrorist acts.

1 (b): Which of the activities listed in this paragraph are in fact considered crimes, and what penalties are attached to them?

In accordance with article 10 of the Act on Combating Terrorism of 16 November 1999, knowingly financing or otherwise assisting a terrorist organization or terrorist group is regarded as terrorist activity.

Persons who are guilty, directly or indirectly, of providing or collecting funds for the commission of terrorist acts are criminally liable for offences committed by terrorists as accomplices to those offences, as provided in articles 35 to 37 of the Criminal Code of the Republic of Tajikistan. In accordance with article 36, paragraph 1, of the Criminal Code, a person who organizes, instigates or abets an offence is deemed an accomplice to that offence, alongside the perpetrator. Pursuant to article 37, paragraph 1, of the Criminal Code, the liability of the accomplices in an offence is determined by the nature and degree of the actual participation of each of them in its commission, and they are liable for committing specific offences under the same article of the Special Section of the Criminal Code as perpetrators of terrorist acts. The very fact of collecting funds for the commission of such offences is thus sufficient grounds for the criminal prosecution of the guilty party.

1 (c): What legislation or procedure is in place to freeze accounts or assets in banks and financial institutions?

Article 175 of the Code of Criminal Procedure establishes methods of seizing assets, including the crime-related cash deposits of individuals. The seizure is imposed on individuals suspected or accused, or on an individual bearing material accountability under the law for those individuals' actions, or on individuals in possession of assets obtained by criminal means.

Upon seizure of cash deposits, any transactions in relation to such deposits cease.

Seizure is carried out with a view to taking civil investigative action or with a view to confiscation.

In accordance with article 27 of the Act on Combating Terrorism, any organization deemed by a court to be a terrorist organization will be dissolved by a decision of the court and its assets will be confiscated and transferred as revenue to the State.

Article 33 of the Act on Banks and Bank Activity establishes the procedure for the seizure of financial and other assets of individuals and legal entities which are held in bank accounts or in safe deposit by order of a court or pursuant to an order — endorsed by a prosecutor — of a body undertaking an investigation or initial enquiries.

On receiving a seizure decision, a bank must immediately halt transactions connected with the account or deposit, to the extent covered by the seizure.

Confiscation of funds and other assets may be carried out only on the basis of a legally enforceable court judgement.

1 (d): What steps are being taken to prevent the activities listed in this subparagraph?

Persons who are engaged in terrorist activities, provide assistance to terrorists or terrorist organizations or propagandize their activities are liable under the Criminal Code.

Any organization deemed by a court to be a terrorist organization will be dissolved by a decision of the court and its assets will be confiscated and transferred as revenue to the State (see Act on Combating Terrorism).

The individual concerned must acknowledge providing funds specifically for terrorist ends. If he does not, making him liable in any way would run counter to Tajikistan's international obligations regarding protection of human rights (art. 11 of the Universal Declaration of Human Rights) and the principle of innocence reaffirmed in article 20 of the Constitution of the Republic of Tajikistan.

Paragraph 2 of Security Council resolution 1373 (2001)

2 (a): What legislative and other measures are being taken to implement the provisions of this subparagraph? In particular, what provisions are in force in your country to ban recruitment to terrorist groups and the supply of arms to terrorists? What other measures are being used to help suppress such activities?

In accordance with article 10 of the Act on Combating Terrorism, recruitment to terrorist groups, the supply of weapons to terrorists, and the training and use of terrorists are deemed to be terrorist activities and are regarded as complicity in the terrorist offences committed. Persons guilty of recruiting terrorists may be prosecuted under articles 179, "Terrorism", and 187, "Organization of a criminal association", of the Criminal Code. Persons who supply weapons to terrorists are liable under article 195, "Illegal acquisition, transfer, sale, possession, transport or bearing of weapons, ammunition, explosives and explosive devices", of the Criminal Code.

In accordance with article 27 of the Act on Combating Terrorism, any organization deemed by a court to be a terrorist organization will be dissolved by a decision of the court and its assets will be confiscated and transferred as revenue to the State.

In accordance with article 26 of the Act, persons who engage in terrorist activity, provide assistance to terrorists or terrorist organizations, or champion their activities are held liable under articles 179 and 37 of the Criminal Code.

Persons who are not members of terrorist organizations but who commit terrorist acts on their behalf or are involved in establishing, financing, training and arming such organizations, are held liable to the same degree as members of terrorist organizations.

Persons who possess information about the existence of a terrorist organization or about individuals involved in terrorist activity but fail to disclose it to the

appropriate State bodies are held liable in accordance with article 347 of the Criminal Code.

2 (b): What other measures are in place to prevent the commission of terrorist acts, and, in particular, what early-warning mechanisms exist to exchange information with other States?

To provide early warning of terrorist activity, article 15 of the Act on Combating Terrorism prohibits:

- The establishment, registration and operation of organizations seeking to engage in terrorist activities;
- The entry into, departure from or transit through the territory of Tajikistan of persons who have taken part in terrorist activity;
- The granting of residence permits to persons who have taken part in terrorist activity;
- The granting of Tajik citizenship to foreign citizens who have taken part in terrorist activity;
- The acceptance by bus-station, railway-station or airport staff of passengers' baggage or hand luggage for storage (except in the case of appropriately authorized left-luggage-office staff);
- The holding of meetings, parades, demonstrations or pickets in locations not specified for those purposes.

Furthermore, to provide early warning of terrorist activity, the following are permitted in Tajikistan:

- Calling for additional forces and resources for entities which directly combat terrorism, for the preservation of order during social/political and other mass events;
- Strengthening safeguards and preventive measures for State and local authorities and industries which present an increased danger to human life and health;
- The extradition, in response to a request from the competent authorities of a foreign State and in accordance with international law, of persons who have taken part in terrorist activity in the territory of that State;
- The collection, analysis and dissemination of information on terrorist organizations and persons who are or have been involved in terrorist activity, and the incorporation of that information into a central interdepartmental database on terrorism kept by the Ministry of Security;
- The establishment of specialized subdepartments within entities directly involved in combating terrorism.

Providing early warning of terrorist activity also involves other measures provided for in the legislation of Tajikistan and international agreements concluded by Tajikistan.

The operational situation and political realities have rendered it necessary to make use not just of bilateral international channels but also multilateral, regional

and other avenues of cooperation, such as the Council of Heads of Security Bodies and Special Services of the CIS member States, the CIS Anti-Terrorism Centre, the Bishkek Group and the Regional Counter-Terrorist Structure of the Shanghai Cooperation Organization.

Inter-State programmes for the period up to 2004 to combat international terrorism and crime within the territories of the CIS countries have also been developed and implemented. In order to expand contacts for the exchange of information with the special services of other countries, intergovernmental agreements with Poland, Hungary and the Czech Republic for countering international terrorism are being prepared for signature in 2003 and 2004.

The exchange of information with the CIS member States was stepped up following the terrorist acts committed in Uzbekistan. The authorities of Tajikistan have established measures to improve the participation of society and the media in preventing terrorist propaganda and public frustration. In particular, comprehensive efforts have been undertaken in the media, which severely criticized and condemned the activities of terrorists, so-called "holy warriors" and international terrorist and extremist organizations.

In order to forestall hostile action on the part of the radical extremist party Hizb ut-Tahrir, the Government of Tajikistan organized and held a nationwide seminar in April 2004 with the theme "Hizb ut-Tahrir threats to the security of Tajikistan and the Central Asian region" and a conference on "Religious cooperation in combating extremism and terrorism".

Because international terrorists have expanded their area of activity, the efforts of Tajikistan's law-enforcement agencies have been focused on the action of international terrorist organizations such as the Muslim Brotherhood, Hezbollah, Hamas, Dawat-ul-Irshad, the international jihad front, Al-Qaida, the Islamic Taliban Movement, the Islamic Movement of Uzbekistan, Hizb ut-Tahrir al-Islami and Islom Lashkarlari, which are not merely a threat to the security of Tajikistan, but to that of the international community. As a result, arrangements were made for operational tracking of the clandestine activities of the radical extremist party Hizb ut-Tahrir in Tajikistan and — together with the law-enforcement structures of the CIS member States — its activities in those States.

As a result of operational search and investigative measures carried out by security agencies, more than 104 Hizb ut-Tahrir activists and supporters were detained and arrested for anti-constitutional activities and more than 20,000 copies of subversive and extremist literature were confiscated. Investigative bodies instituted 26 criminal cases under articles 187, 189 and 307 of the Criminal Code of the Republic of Tajikistan. The judicial authorities investigated 14 criminal cases and sentenced 18 individuals. Thirty-four members of the above-mentioned extremist party were placed in preventive detention.

In February 2004, two members of staff of the security agencies of Tajikistan were assigned to the Regional Counter-Terrorist Structure of the Shanghai Cooperation Organization, headquartered in Tashkent, Uzbekistan, to coordinate and develop joint efforts to combat international terrorism.

The law-enforcement agencies of Tajikistan exposed four terrorist groups which had engaged in particularly serious State crimes — including terrorism and sabotage within the territory of Tajikistan — between 1994 and 2002, having

undergone specialist training abroad. Four leaders and 36 members of such groups were detained and sent for criminal trial. In cooperation with international and regional counter-terrorism structures and foreign States' special services, search operations were launched for 20 members and associates of those groups who had gone into hiding.

2 (c): What laws or procedures exist to deny asylum to terrorists (such as laws on the admission or expulsion of persons covered by this subparagraph)?

With the aim of preventing terrorist activity in Tajikistan, article 15 of the Act on Combating Terrorism prohibits persons who have taken part in terrorist activity from entering, leaving or transiting through the territory of Tajikistan and from acquiring residence permits or citizenship.

Persons who have taken part in terrorist activity in the territory of a foreign State are extradited in accordance with international law in response to a request from the competent bodies of that State.

In accordance with article 3 of the Act on Refugees, persons in respect of whom there is information about a possible connection with the secret-service bodies of the State of which they are nationals, international terrorist organizations, or drug-trafficking structures may not be recognized as refugees. Pursuant to article 7, the rights of asylum-seekers who have applied for refugee status may be restricted in the cases envisaged by the laws and regulations of the Republic of Tajikistan in order to ensure the protection and security of the State, the preservation of the foundations of the constitutional order, and protection of the morality, health, and rights and lawful interests of other persons.

2 (d): What laws or procedures exist to prevent your territory from being used for terrorist activity directed at other States or citizens?

See responses to paragraphs 1 (b) and 2 (a).

2 (e): What steps have been taken to categorize terrorist acts as serious crimes and to match sentencing to the seriousness of such terrorist acts?

In accordance with article 18 of the Criminal Code, such crimes are treated as premeditated acts carrying a maximum custodial sentence of 12 years, or as particularly grave premeditated acts carrying a custodial sentence of over 10 years or a more severe sentence.

Article 179, "Terrorism", of the Criminal Code establishes custodial sentences of 5 to 10 years; with 8 to 15 years and 10 to 18 years in categorized cases; and 15 to 20 years with confiscation of assets, or the death penalty, in specially categorized cases.

Terrorist acts are therefore grave or particularly grave crimes; this has implications for the determination of maximum sentences for re-offenders (arts. 21, 66 of the Criminal Code).

2 (f): What procedures and mechanisms exist to assist other States?

The legislation in force in Tajikistan allows for the possibility of seizing the property and assets of individuals and legal entities at the request of foreign partners only on the basis of duly formulated requests for the provision of judicial assistance in relation to the criminal cases which they are prosecuting.

In order to speed up the fulfilment of requests for judicial assistance made in connection with terrorism-related crimes, agreements have been concluded with representatives of certain countries for each party to appoint a coordinator for cooperation in such matters.

The Public Prosecutor's Office is responsible for coordinating the fulfilment by the law-enforcement agencies of Tajikistan of requests for judicial assistance made in connection with terrorism-related criminal cases.

See also the response to paragraph 3 (c) and the section entitled "Additional Information".

2 (g): How do the border-control authorities prevent the movement of terrorists? How do the procedures for identity checks and verification of travel documents assist in that regard?

In fulfilment of the requirements of this paragraph of Security Council resolution 1373 (2001) for preventing the unimpeded movement of terrorists or terrorist groups throughout the territory of the Republic, units of the Government Committee for the Protection of the State Border, together with the "Red Banner" border-guard directorate of the Federal Security Service of the Russian Federation in Tajikistan, are effectively monitoring at crossing points the departure and entry of persons for whom entry into the country is prohibited under the established procedure.

The Government Committee for the Protection of the State Border is also directly involved in countering terrorism by detecting, preventing and suppressing terrorists' attempts to cross the State border of Tajikistan and by helping the State security agencies to combat international terrorist activity.

The Committee for the Protection of the State Border carries out passport and visa checks, and monitors foreign citizens' and stateless persons' entry into, stay in and departure from Tajikistan. Screening is carried out to detect persons suspected of involvement in terrorist activity, and foreign citizens and stateless persons are questioned selectively to determine that their reasons for travel to Tajikistan correspond to those for that category of traveller. The Committee for the Protection of the State Border also acts on behalf of the law-enforcement agencies carrying out operational investigations of the activities of persons banned from entering or leaving Tajikistan pursuant to the procedures laid down in its legislation. In accordance with the Act on Operational Search Activities, the operational sub-units of the Committee also carry out operational search activities, exclusively within the bounds of their powers, as established in the relevant legal acts of Tajikistan.

In 2003 and the first quarter of 2004, 95 violations of the State border were detected, and there were 18 armed engagements with Afghan smugglers attempting to infiltrate from Afghanistan into Tajikistan.

Paragraph 3 of Security Council resolution 1373 (2001)

3 (a): What steps have been taken to intensify and accelerate the exchange of operational information in the areas covered by this subparagraph?

The senior officials of the Committee for the Protection of the State Border regularly exchange information on the situation along the State border with their counterpart structures in neighbouring States in order to detect, prevent and suppress

terrorists' attempts to cross the State border and suppress the illegal transport across that border of weapons, ammunition and explosives, toxic or radioactive substances and other items which may be used for terrorist purposes. The Committee is also involved in developing proposals to strengthen the protection of the State border in order to prevent assistance from being given to terrorists from abroad and to prevent incursions.

In order to intensify such efforts, a department for international relations has been established within the Committee for the Protection of the State Border; it is responsible for maintaining bilateral and multilateral relations.

Overall coordination of cooperation among the border forces of the CIS members States is carried out by the Council of Border Troop Commanders within the framework of the CIS Collective Security Treaty.

Steps are being taken to exchange information on the issues concerned with the border troops of Afghanistan.

3 (b): What steps have been taken to exchange information and to cooperate in the areas covered by this subparagraph?

Regular exchanges of information with partners in the counter-terrorist coalition are carried out by the special services of Tajikistan, but also other bodies in Tajikistan involved in countering terrorism: the Ministry of Defence, the Ministry of Internal Affairs, the Government Committee for the Protection of the State Border and the customs department of the Ministry of State Revenue and Taxes.

As part of this process, the Ministry of Internal Affairs exchanges information on the assessment and tracking of the development of crime, on operational searches and on operational monitoring of the social environment and individuals who might provide support to terrorists.

3 (c): What steps have been taken to exchange information and to cooperate in the areas covered by this subparagraph?

Tajikistan is active within the framework of the Agreement on Cooperation among States Members of the Commonwealth of Independent States in the Fight against Crime (Moscow, 25 November 1998), the Agreement on arrangements regarding the presence of and cooperation among law-enforcement agency staff in the territories of the States Members of the Commonwealth of Independent States (Minsk, 4 June 1999) and the Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism (Minsk, 4 June 1999).

In accordance with the Programme of the CIS member States to combat international terrorism and other manifestations of extremism for the period up to 2003, adopted by a decision of the heads of State on 21 June 2000, counter-terrorism subdivisions, forces and resources of the Ministry of Defence and Ministry of Internal Affairs and border troops of Tajikistan take part in the yearly comprehensive counter-terrorism exercises of the member States.

Furthermore, in accordance with the decision of the Collective Security Council meeting held in Yerevan (25 January 2001), rapid-reaction forces for the Central Asian region were established by 1 August 2001 under the Collective Security Treaty. They included units and subdivisions of the armed forces of four member States (Kazakhstan, Kyrgyzstan, Tajikistan and Russia). The collective

rapid-reaction forces are intended to ensure the military security of the Central Asian States parties to the Collective Security Treaty; their functions include taking part in efforts to repel outside military attack and conducting joint counter-terrorist operations.

3 (d) and (e): What are your Government's intentions regarding signature and ratification of the conventions and protocols referred to in these subparagraphs? Please provide all available appropriate information on the implementation of the conventions, protocols and resolutions referred to in these subparagraphs.

Tajikistan is losing no time in acceding to the appropriate international conventions and protocols relating to terrorism. The Parliament of Tajikistan has ratified the International Convention for the Suppression of the Financing of Terrorism (9 December 1999) and the Convention on the Marking of Plastic Explosives for the Purpose of Detection (1990).

The legislative and law-enforcement authorities are currently engaged in a planned, uninterrupted effort to draft and adopt laws and other normative acts to meet the need to counter various aspects of terrorism and to make Tajikistan a party to the international conventions in question.

In 2003, with the aim of broadening and strengthening the legal basis for counter-terrorism efforts, the Parliament of Tajikistan adopted the Act on Combating Extremism, expanded and amended the Customs Code and the Criminal Code, ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and On Their Destruction, an agreement between Tajikistan and the Swiss Foundation for Mine Action regarding mine clearance and cooperation in mine clearance, and the Agreement on the Legal Status and Charter of the Collective Security Treaty Organization. In 2004, the Governments of Tajikistan and France signed an agreement on cooperation in internal security.

The Parliament of Tajikistan is currently preparing to ratify a protocol adopting regulations on the procedure for conducting joint counter-terrorism measures in the territories of the CIS member States.

3 (f): What legal provisions, procedures and mechanisms are there to ensure that asylum-seekers have not been involved in terrorist activity before they are granted refugee status?

See response to paragraph 3 (g).

3 (g): What procedures exist to prevent terrorists from abusing refugee status? Please provide information on the legal or administrative procedures to ensure that invoking political motives has not been considered a reason to refuse requests for the extradition of persons suspected of terrorism.

Tajikistan's legislation regarding refugees is based on the Constitution and consists of the Act on Refugees, other laws and regulations and international legal instruments recognized by Tajikistan.

The State authorities which implement refugee policy are the State migration agency, the security agencies, internal-affairs agencies, border-protection agencies and local authorities. Each of these bodies carries out functions and tasks within the bounds of its responsibilities under the above-mentioned Act.

Article 3 of the Act provides for a restriction on the granting of refugee status in the Republic of Tajikistan to the following persons:

- Persons in respect of whom there are adequate grounds for believing that they have committed a crime against the peace, a military crime or a crime against humanity as defined by the international instruments concluded with a view to the adoption of measures in relation to such crimes;
- Persons in respect of whom there are adequate grounds for believing that they have committed a grave crime of a non-political nature outside the Republic of Tajikistan before arrival in its territory and who are applying for refugee status;
- Persons in respect of whom there is information about a possible connection with the secret-service bodies of the State of which they are nationals, international terrorist organizations, or drug-trafficking structures;
- Persons in respect of whom there are adequate grounds for believing that they are guilty of committing acts that run counter to the purposes and principles of the United Nations and the Organization for Security and Cooperation in Europe.

The Act also excludes persons who have abandoned the State of which they are nationals for economic reasons as a result of hunger, epidemics or natural or man-made emergencies.

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Security Council

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Letter dated 20 December 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 19 October 2004 (S/2004/851). The Counter-Terrorism Committee has received the attached fourth report from Belgium submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 17 December 2004 from the Permanent Representative of Belgium to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: French]

I have the honour to transmit herewith the fourth report of Belgium to the Counter-Terrorism Committee (see enclosure). The report provides answers to the questions posed by the Committee in your letter of 20 September 2004.

(*Signed*) Johan C. **Verbeke**
Ambassador
Permanent Representative of Belgium to the United Nations

Enclosure*

[Original: French]

Fourth report of Belgium to the Counter-Terrorism Committee

1. Implementation measures

Effectiveness in the protection of financial systems

1.1 Structure, resources and staffing of the Belgian Financial Intelligence Processing Unit (BFIPU)

Structure of BFIPU

With regard to the structure of the Belgian Financial Intelligence Processing Unit (BFIPU), it is important to distinguish between the members of BFIPU, who have decision-making powers, and the secretariat staff, who provide technical assistance. The composition, organization and functions of BFIPU are governed by the royal order of 11 June 1993.[1]

BFIPU members

BFIPU is composed of financial experts and a senior officer of the federal police, and is headed by a judge assigned from the prosecution service, or his deputy. During the preparatory work for BFIPU, the Minister of Justice expressed a preference for a judge from the prosecution service on the grounds that, once an effective money-laundering index was established, BFIPU should be able to communicate the relevant information to the prosecution service without delay. The members of BFIPU, who comprise a minimum of three and a maximum of eight experts, are appointed by the King, on the proposal of the Ministers of Finance, Justice and Economic Affairs, for a renewable six-month term. Half the members are subject to renewal every three years. The vice-chairman and the one or two judges serving as deputy chairmen are appointed from among the members. The appointment of members is governed by very strict requirements. In particular, they must have at least 10 years' experience in a judicial, administrative or scientific post relating to the activities of individuals and entities to which the law applies. They may not hold any elective public position or carry out any employment or public or private activities that could compromise the independence or dignity of their position. They may not simultaneously hold, or have held during the year prior to their appointment, a position as an administrator, director, manager or officer of a financial institution, real-estate firm, money transportation firm or casino. They are bound by strict professional confidentiality.

The internal rules of procedure of BFIPU provide that the chairman is responsible for overseeing the preparation and review of cases submitted to BFIPU, the drafting of minutes of its meetings and the implementation of its decisions. He

* Annexes are on file with the secretariat and are available for consultation.

[1] Royal order of 11 June 1993 concerning the composition, organization, functions and autonomy of the Belgian Financial Intelligence Processing Unit, published in the *Moniteur belge* of 22 June 1993, p. 15,118. This order has been amended on several occasions, notably through the amendments made to the law of 11 January 1993. It was amended by the royal orders of 30 May 1994, 23 February 1995, 4 February 1999, 28 December 1999 and 20 July 2000.

also handles general external relations, convenes meetings as required by the mandate of BFIPU, and represents it in all its judicial and extrajudicial proceedings.

The chairman and vice-chairman make up the bureau. If the chairman is unable to attend, he is replaced by one of the deputy chairmen. If the vice-chairman is unable to attend, he is replaced by another member. The internal rules of procedure of BFIPU define the bureau's mandate. The bureau is responsible for organizing the work of BFIPU and for its day-to-day administration; it oversees the preparation of the budget, as well as the annual operating report. It hires secretariat staff under contract and sets their salary levels, directs them and organizes their work. It takes decisions on the secondment of staff to BFIPU.

The royal order of 11 June 1993 stipulates that the Ministers of Justice and Finance are responsible for setting the salary levels of the members of BFIPU.

BFIPU secretariat

In accordance with article 7 of the royal order of 11 June 1993, BFIPU is assisted by a secretariat composed of administrative staff, as well as staff who are responsible for assisting the financial experts. The secretariat has grown somewhat over the past 10 years, as a result of the continuous increase in the tasks of BFIPU. It currently comprises two secretaries; a head of administration; a head of documentation; 10 information assistants; three legal advisers; one criminologist; a team of 12 inspectors, analysts, economists and lawyers; and a head of investigations and human resources who coordinates the investigations with the assistance of two chief inspectors. It is the inspectors who are responsible for analysing financial information gathered by BFIPU. The information assistants maintain the databases and assist the inspectors.

Staff of the secretariat are bound by the same strict professional confidentiality as the members of BFIPU. They are also subject to incompatibility rules and, under article 7 of the royal order of 11 June 1993, may not perform any duties for, or be employed by the financial entities or professions to which the law of 11 January 1993 applies. BFIPU establishes the ethical standards to be followed by its staff.

BFIPU has also engaged the services of three full-time liaison officers, seconded from the police, who are mainly responsible for relaying information between the police and BFIPU. A customs officer is also seconded on a part-time basis. In accordance with article 9 of the royal order of 11 June 1993, these officials must give a written undertaking to maintain professional confidentiality.

BFIPU may also call upon the services of external experts, and they too are bound by professional confidentiality.

Budget of BFIPU

Because of its legal status, BFIPU establishes and manages its own budget, although the Ministers of Justice and Finance determine a maximum budget level. Laws concerning the budgetary authority of the State do not, therefore, apply to BFIPU.

When BFIPU was established, the ministerial decree of 17 June 1993 fixed its maximum budget level at 35 million Belgian francs. The maximum level has risen

to €2 million because the workload of BFIPU has increased substantially since its inception, primarily because of the expansion of its preventive functions.

The budget of BFIPU is not paid by the State, and consists instead of annual contributions paid by the entities and professions to which the law applies.

Article 11, paragraph 7 of the law of 11 January 1993 provides that the King sets the level of contributions to the operating costs of BFIPU payable by the institutions and entities concerned. Article 12 of the royal order of 11 June 1993 provides for two categories of contribution: one fixed, and the other variable. All the entities and professions to which the law applies are required to pay a fixed contribution in an amount dependent upon their size and the number and nature of the reports they are required to make to BFIPU. Furthermore, each financial institution to which the law applies — with the exception of the National Bank of Belgium, the Post Office, the Savings Bank, consumer credit companies, institutions that issue or manage credit cards and mortgage-lending institutions — is required to pay a variable contribution which is prorated against its share of the overall contribution to operating expenses that was paid to the respective supervisory authorities in the previous year.

Under article 12, paragraph 5 of the royal order of 11 June 1993, BFIPU may authorize the value added tax, registration and State property department to collect outstanding contributions.

Technical resources of BFIPU

BFIPU is equipped with the necessary technical resources to deal effectively with suspicious transaction reports and associated information. Its database was developed internally and designed to meet the operational requirements of its prevention functions. Since 2003 BFIPU has used the MySQL programme. There are also plans to automate the transmission of suspicious transaction reports using a mandatory form. Initially this means of communication would apply solely to financial institutions.

With respect to the exchange of information with the Financial Intelligence Units (FIUs) of other countries, BFIPU uses two secure communication methods: Egmont Secure Web, which was developed by the Egmont Group and is used by nearly all the 94 FIUs that are members of the Group, and FIU.NET, which is currently being used by a number of FIUs of European Union countries. The European Commission actively supports the development of FIU.NET.

1.2 Procedures used to designate terrorist organizations

Belgium does not maintain a national list of terrorist organizations. Assets freezing procedures are therefore applied only against individuals or entities appearing on the lists of the United Nations Security Council or the European Union.

Belgium contributes to the formulation of the European Union lists through the European Union clearing house. Its contributions are made following consultations among the Federal Department of Foreign Affairs, the Federal Department of the Interior, the Federal Department of Justice, the State Security Department, the Federal Prosecution Service and the Federal Police.

With regard to the State Security Department in particular, the organic law of 30 November 1998 on the intelligence and security services defines terrorism as the use of violence against persons or property for ideological or political motives in order to achieve one's goals through terror, intimidation or threats (art. 8, part 1, para. 2 (b)).

1.3 Measures relating to the transfer of funds

I Measures relating to wire payments and transfers, aimed at combating the financing of terrorism

(a) Client identification

According to article 4, paragraph 1 of the law of 11 January 1993 (as amended by the law of 12 January 2004) on preventing the use of the financial system for the purposes of money-laundering and the financing of terrorism, before a wire transfer or payment is made, the institution concerned must first completely and correctly identify the client in question, verify his identity by means of a duly certified document, and make a copy of the document.

Under amended article 21 bis of the law of 11 January 1993, the supervisory authorities — including, with respect to institutions such as credit companies and foreign exchange bureaux, the Banking, Finance and Insurance Commission (BFIC) — are required to inform the institutions under their control, by means of regulations if necessary, of how they should discharge their legal obligations under section II of the law, including obligations regarding client identification.

On 27 July 2004 BFIC adopted its regulations in application of article 21 bis of the law. The regulations were approved by a royal order of 8 October 2004. The royal order and the BFIC regulations were published in the *Moniteur belge* of 22 November 2004. The regulations set out detailed rules for the identification of clients by the institutions concerned.

BFIC also supplemented its regulations with a circular of 22 November 2004 on client due diligence requirements and on preventing the use of the financial system for the purposes of money-laundering and the financing of terrorism. The circular provides a commentary on the applicable laws and regulations and makes recommendations for their effective implementation.

The BFIC regulations and circular may be consulted on its web site: http://www.cbfa.be

(b) Policies regarding client acceptance

Within the framework of the aforementioned regulations and circular, BFIC has also strengthened its requirements regarding client identification through the requirement that each institution should design and implement an adequate client acceptance policy, which may be used not only to help build business relationships with clients, but also in cases where an occasional client wishes to make an isolated transaction (including a wire transfer).

Without going into every detail on this point, it may be noted that paragraph 7.1 of the BFIC circular sets forth the general principles underlying the client acceptance policy. Paragraph 7.1.2 is of particular significance; it provides that the client acceptance policy should also enable each institution to ensure that it is meeting its financial embargo obligations in accordance with the royal orders and ministerial decrees adopted pursuant to the decree-law of 6 October 1944 on the control of all transfers of assets and securities between Belgium and other countries,[2] the law of 11 May 1995 on the implementation of the decisions of the United Nations Security Council,[3] and the law of 13 May 2003 on the implementation of the restrictive measures adopted by the Council of the European Union against States, certain persons and entities.[4] This requires in particular that steps are taken to verify that neither the client, nor his representatives, if any, nor his economic beneficiaries are persons who are included in the applicable embargo lists.

(c) Immediate transfer of information on the originator of wire transfers

Amended article 4, paragraph 5 of the law of 11 January 1993 provides that any institutions stipulated in article 2 whose activities include wire transfers within the meaning of article 139 bis of the law of 6 April 1995 on the status and oversight of investment companies, securities brokers and advisers, must ensure that wire payments and transfers, as well as related communications, are accompanied by precise and relevant information concerning their originators. These institutions must retain all such information and forward it when acting as intermediaries in a sequence of payments.

In view of the work under way at the European level to draft a European regulation — which would be directly applicable in member States — to set out the modalities for the implementation of Special Recommendation VII of the Financial Action Task Force on Money Laundering (FATF), BFIC has decided not to include similar provisions at the current stage in its regulations adopted pursuant to article 21 bis of the law of 11 January 1993. However, it did devote chapter 10 of its aforementioned circular to specific requirements regarding wire transfers. This chapter is directly based on Special Recommendation VII of FATF and its interpretative note.

(d) Specific requirements for vigilance by institutions regarding wire payments and transfers

The law (art. 2, para. 2 and art. 8), the BFIC regulations (arts. 35 to 37), and the BFIC circular (chap. 9) also set out the requirements for vigilance by the institutions concerned with regard to their clients and their business transactions and relations.

Briefly, in addition to the "first-tier" vigilance exercised by officials directly involved with clients and transactions, the new provisions require that the institutions concerned implement a "second-tier" monitoring system. This system, which would ideally be automated, should enable such institutions to identify

[2] *Moniteur belge*, 7 October 1944; amended by the law of 28 February 2002 on the establishment of Belgium's balance of payments and global foreign positions and amending the decree-law of 6 October 1944 on the control of foreign exchange transactions and various legal provisions, *Moniteur belge*, 3 May 2002, 2nd edn., p. 18,700.

[3] *Moniteur belge*, 29 July 1995, p. 20,444.

[4] *Moniteur belge*, 13 June 2004, p. 31,923 and errata *Moniteur belge*, 20 June 2003, p. 33,191.

unusual transactions which need to be analysed to ensure that they are not linked to money-laundering or the financing of terrorism, and thus to inform BFIPU more efficiently of any transactions that do appear suspicious.

These provisions apply equally to wire transfers and payments, whether made by clients or initiated by clients themselves. This two-tier monitoring mechanism should make it possible to identify, and communicate to BFIPU, any transfers or payments made to or by an individual whose name is included in a financial embargo list. Furthermore, article 38 of the aforementioned BFIC regulations provides, in its final paragraph, that an unusual transaction within the meaning of this article is a wire payment or transfer received by a client concerning which the precise and relevant information concerning the originator envisaged in article 4, paragraph 5 of this law is missing. Such transactions also have to be analysed by the official responsible for the prevention of money-laundering and the financing of terrorism and, if necessary, communicated to BFIPU.

II. Monitoring methods — penalties

BFIC is also the regulatory authority responsible for monitoring entities under its jurisdiction to ensure that they comply with their legal and regulatory obligations relating to the prevention of money-laundering and the financing of terrorism, and are properly organized and have sufficient internal controls in that regard. In this context, BFIC also verifies whether entities duly report such suspicious transactions as they detect to BFIPU. BFIC carries out these controls on the basis of legal provisions which determine its routine monitoring powers with regard to companies under its jurisdiction.

Against this backdrop, BFIC can in particular carry out remote monitoring relating to the prevention of money-laundering and the financing of terrorism on the basis of the annual activity reports of the officials responsible for the prevention of money-laundering and the financing of terrorism within each entity, a copy of which must be sent to BFIC.

In addition, BFIC carries out "on-site" monitoring to ensure that entities comply with legal and regulatory obligations, are properly organized at the administrative level and have sufficient internal controls vis-à-vis the prevention of money-laundering and the financing of terrorism. It does this by seeking assistance from external auditors, on the one hand, and conducting on-site inspections itself, on the other.

Where the latter are concerned, checks are carried out either during inspection visits relating specifically to the prevention of money-laundering and the financing of terrorism or during inspection visits relating to other activities or functions of the establishment in question, but which also include an investigation of the prevention of money-laundering and the financing of terrorism in the context of the activity or function being inspected. Reports including the observations and recommendations arising from the inspections are sent to the management of the establishment concerned. Implementation of these recommendations is monitored either with the assistance of external auditors or through follow-up inspections.

Should serious shortcomings be observed, article 22 of the law of 11 January 1993 provides for penalties (administrative fine).

Effectiveness of counter-terrorism

1.4. Prosecutions

No one has been prosecuted for the financing of terrorist activities since the adoption of Security Council resolution 1373 (2001).

With regard to terrorist activities and the provision of support to terrorists or terrorist organizations, a distinction must be made between cases concerning which a judicial decision has already been taken and cases which are still in the investigation stage.

– *Cases concerning which a judicial decision has already been taken*: There are four cases concerning which judicial decisions have been taken since 28 September 2001. None of these procedures were based on the law of 19 December 2003 relating to terrorist offences, which has been in force since 1 January 2004. The individuals charged in connection with these cases were therefore convicted on charges of criminal offences under ordinary law but for acts committed in the context of terrorism:

• number of people convicted on charges of terrorist activities: 9

• number of people convicted on charges of providing support to terrorists or terrorist organizations: 18.

– *Cases which are still in the investigation stage*: Two cases are currently in the investigation stage, in connection with which 13 people have been charged, as follows:

• number of people charged with terrorist activities: 8

• number of people charged with providing support to terrorists or terrorist organizations: 5.

These two cases are being investigated under the law of 19 December 2003 relating to terrorist offences.

1.5. Becoming a party to conventions relating to terrorism

Belgium acceded to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, on 19 May 2004.

The International Convention for the Suppression of Terrorist Bombings is in the process of being ratified: the Belgian Council of Ministers of 19 November 2004 approved the ratification documents; once the Council of State has issued its opinion (expected by the end of December 2004), the bill of Parliamentary assent will be presented to Parliament.

The Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol have been brought into line with the opinion of the Council of State and presented to Parliament: both instruments could still be ratified by the end of 2004 or early in 2005.

Only one instrument remains pending: the Convention on the Marking of Plastic Explosives for the Purpose of Detection. Since this has been declared a

mixed treaty, it must also be ratified by the regional Parliaments. At the federal level, the Federal Transport Department is responsible for the dossier.

1.6. Cooperation and information sharing among the various government agencies, including their foreign counterparts, which may be involved in investigating the financing of terrorism

BFIPU prepares its cases on the basis of suspicious transaction reports received from institutions and individuals subject to the law of 11 January 1993 on preventing the use of the financial system for money-laundering and the financing of terrorism. According to article 15, paragraph 1 of this law, BFIPU may request such additional information as it deems useful to fulfilling its mandate, within a deadline of its own choosing, from the entities listed below:

(i) All the entities and individuals mentioned in articles 2, 2 bis and 2 ter (respectively, the financial sector in the broad sense of the word, a number of non-financial professions and, in certain specific cases, lawyers), as well as the president of the Bar mentioned in article 14 bis, paragraph 3. This applies not only to the main declarant of the case, but to *all reporting individuals and entities*;

(ii) The *police services*, notwithstanding article 44/1 of the law of 5 August 1992 on the role of the police as amended by the law of 26 April 2002 on the essential elements of the status of members of the police services and establishing various other provisions relating to the police services. This provision applies to both the federal police and the local police;

(iii) The *administrative services of the State*, such as the fiscal authorities, the Department of Customs and Excise, the State Security Service and the General Intelligence and Security Services of the Belgian Armed Forces, the National Office for Social Security, the Alien's Office, etc.;

(iv) *Official receivers*;

(v) *Provisional administrators*, mentioned in article 8 of the law of 8 August 1997 on bankruptcy; and

(vi) *Judicial authorities*. However, an examining magistrate may not transmit information to BFIPU without the express authorization of the public prosecutor or federal prosecutor and BFIPU may not transmit information obtained from a judicial authority to a foreign entity, in application of article 17, paragraph 2 of the law of 11 January 1993, without the express authorization of the public prosecutor or federal prosecutor.

To facilitate the gathering of additional information, three federal police liaison officers have been seconded to BFIPU on a full-time basis, as well as one Customs Department liaison officer on a part-time basis. A similar mechanism for closer cooperation with the State Security Service is currently being developed. It should also be noted that the law of 17 January 2003 amending the law of 11 December 1998 on security clearances and classification exempts BFIPU from having the necessary security clearance to access such information, as was already the case for judicial authorities.

In addition, under article 21 of the law of 11 January 1993, the *oversight or supervisory authorities or disciplinary authorities* of reporting entities and

individuals who observe facts that could constitute evidence of money-laundering are obliged to inform BFIPU. This reporting obligation relates to facts observed by the authorities concerned either during their inspections or in the context of their legal and regulatory role.

BFIPU is bound by strict professional confidentiality. This is why information always circulates in one direction only, from the entities and individuals concerned and the police and administrative services to BFIPU, and not in the opposite direction.

There are a number of exceptions to the confidentiality obligation, in addition to that concerning the transmission of information to the prosecution service should an analysis by BFIPU reveal serious indications of money-laundering or financing of terrorism. Thus, BFIPU may communicate such information to its *foreign counterparts* on the basis of reciprocity and provided that the latter do not use the information for investigative purposes or transmit it to third parties without the prior consent of BFIPU, and that the counterpart concerned is subjected to the same confidentiality obligations as BFIPU. BFIPU is a founding member of the Egmont Group and collaborates regularly with 63 financial intelligence units.

Requests for information from foreign counterparts are considered in the same way as suspicious transaction reports, in accordance with article 11, paragraph 2 of the law of 11 January 1993. This means that, in order to process such reports, BFIPU may request such information as it deems useful in accordance with article 15 of the law (see above). As explained above, this information is exchanged through the Egmont Secure Web (ESW) or the FIU.NET web site.

Moreover, BFIPU may transmit useful information to the *oversight, supervisory or disciplinary authorities* of entities and professions subject to the law so that those authorities may, if necessary, impose penalties for non-compliance with the provisions of this law. BFIPU has made use of this right on several occasions, particularly regarding shortcomings in client identification and suspicious transaction reports. It may also inform these authorities when a case connected with the laundering of money derived from an offence which the authorities are competent to investigate is transmitted to the prosecution service. Thus, for example, BFIC may ask BFIPU to transmit any information on cases connected with the offence of insider trading.

In addition, like the mechanism for notifying the Minister of Finance, whenever BFIPU transmits a case connected with serious organized fiscal fraud or a customs-related offence to the prosecution service (see above) concerning which the State Security Service or the General Intelligence and Security Services of the Armed Forces have provided information, it informs those services of the transmission.

The mechanisms described above are fully applicable in the context of combating the financing of terrorism, as BFIPU is the authority that is competent to receive reports of transactions suspected of being connected with the financing of terrorism from the institutions and individuals subject to the law of 11 January 1993. A distinction must be made between these reports and decisions relating to the freezing of assets taken on the basis of United Nations resolutions and European regulations. The latter, which generate a purely administrative procedure, must be addressed to the Treasury. Even though the two procedures are separate, BFIPU informs the Treasury and the Minister of Finance each time it transmits a case

containing the name of an entity or individual included in the United Nations lists to the prosecution service.

Moreover, BFIPU is in regular contact with other authorities responsible for processing cases connected with the financing of terrorism, such as the federal prosecution service, the federal police and the State Security Service.

According to statistical data gathered by BFIPU over the past four years, it has transmitted 64 cases connected with terrorism or the financing thereof to the judicial authorities. Of these, three cases resulted in a legal conviction in 2003. Twenty-two other cases were sent back to the correctional court. As at 1 October 2004, five cases connected with terrorism and transmitted by BFIPU were at the investigation stage and 19 were at the preliminary hearing stage. In addition, at the same date, one case connected with the financing of terrorism and transmitted by BFIPU was at the investigation stage and two other cases connected with the financing of terrorism and transmitted by BFIPU were at the preliminary hearing stage.

It should be emphasized that BFIPU justifies the transmission of cases to the prosecution services on the grounds of serious indications of financing of terrorism or of money-laundering connected with the serious offences mentioned in article 3, paragraph 2 of the law of 11 January 1993. BFIPU may also indicate one or more criminal activities from which the funds concerned may derive. However, the judicial authorities are not bound by the definition provided by BFIPU when the case is transmitted to the prosecution service. It is up to the latter to decide how it will follow up the information transmitted and, if necessary, the offence(s) for which action will be brought. This is why the statistical data drawn up by BFIPU differs from that drawn up by the judicial authorities (see section 1.4).

Within the European Union, a mechanism has been established for peer evaluation of national counter-terrorism mechanisms (Council decision of 28 November 2002). An initial area for evaluation is the exchange of information between the police and intelligence services, and other bodies dealing with the various aspects of terrorism, with a particular focus on extremist Islamic groups. Belgium was evaluated in September 2003 by experts from Italy, Portugal and the European Police Office (Europol). The evaluation report was approved by the Council in October 2004.

Effectiveness of customs, immigration and border controls

1.7. Border controls

Customs authorities do not carry out any border controls on cash or securities and no limit is therefore imposed. Other assets (precious metals and precious stones) come under normal customs controls (customs declaration and assets control). There are no limits, provided the assets concerned are not subject to an embargo. Special measures are applied to diamonds; however, authorization is required for all imports or exports of diamonds and for rough diamonds, a Kimberley certificate is required, but no other limits are imposed.

A European Union directive is nonetheless being drafted that would make customs declarations compulsory for sums exceeding €10,000. Once the directive is published, the States members of the European Union will have 18 months to transpose the directive into their domestic legislation. This directive concerns customs controls at the European Union's external borders.